



DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



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ADM: 36	
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SUBJECT: INVESTIGATION AND RESOLUTION OF COMPLAINTS

1.0 PURPOSE

The purpose of this policy is to establish guidelines for the investigation and resolution of complaints arising under the Department of Public Safety's Anti-Discrimination, Harassment, and Retaliation Policy.

2.0 POLICY

These procedures govern the investigation and handling of complaints arising under the Department of Public Safety's Anti-Discrimination, Harassment, and Retaliation Policy.

3.0 APPLICABILITY

This policy applies to all employees of the Department of Public Safety (DPS) regardless of their employment relationship with the Department. This policy further extends and applies to all applicants for employment, contractors, employees or clients of DPS sub-recipients, and all clients of the Department of Public Safety.

4.0 REFERENCES

- A. Personnel Board Rule 1NMAC7.4
- B. Title VII of the Civil Rights Act of 1964 as amended
- C. The Human Rights Act
- D. Americans with Disabilities Act, as amended
- E. Civil Rights Act of 1991
- F. Title VI of the Civil Rights Act of 1964

5.0 DEFINITIONS

The definitions contained in the Department of Public Safety's Anti-Discrimination, Harassment, and Retaliation Policy apply herein.

6.0 PROCEDURE

If, upon receipt of a complaint involving allegations of civil rights based discrimination, harassment, or retaliation, or at any time during an inquiry or investigation, the EEO Officer reasonably believes that immediate corrective or preventative action is required to assure the safety or well-being of the complainant and to preserve the work environment, the EEO Officer shall recommend to the Secretary and/or the Chief that temporary corrective action (other than an adverse action against the complainant) be taken pending the resolution of the complaint. Such action, when warranted, may include separating the complainant and respondent, or temporarily removing the respondent, with no loss of pay, from the workplace. The DPS Secretary and/or the Chief shall make the determination on temporary corrective action in consultation with the EEO Officer.

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If the Secretary and/or the Chief determine that a report of discrimination, harassment, or retaliation is appropriately referred for criminal investigation, a criminal investigation referral shall be made by the Secretary and/or the Chief, or the Secretary if the Chief is involved in the complaint. The Chief or the Secretary, including if the Chief is involved, will also take the necessary steps to transfer, reassign, place on administrative leave, or otherwise remove the respondent from workplace contact with the complainant to assure the well-being and safety of the complainant. The complainant will be informed when a particular report is referred for criminal investigation.

A. Informal Resolution Procedure

1. Immediately upon receipt of a complaint of discrimination or harassment, and following review of the central registry described below, the DPS EEO Officer will make an initial determination as to whether the acts complained of are amenable to mediation.
2. If the EEO Officer determines that the acts complained of are amenable to mediation the EEO Officer, or designee, shall consult with the complainant. If the complainant is willing to have his or her complaint mediated, then the EEO Officer, or designee, shall attempt mediation. In no event shall mediation be conducted regarding any of the following complaints:
 - a. Allegations of threats, violence, intimidation, physical touching, assault, or retaliation;
 - b. In any situation where the respondent has previously been counseled or disciplined for discrimination, harassment, or retaliation; or
 - c. In any situation where the respondent has previously entered into a mediation agreement regarding similar conduct.
3. If mediation is successful, a written agreement is prepared by the assigned mediator. The written agreement must be signed by both parties and approved by the EEO Officer and where necessary, the Secretary and/or the Chief. A copy is kept in a confidential file. Generally, the mediation agreement may include:
 - a. A pledge by the respondent not to engage in any behavior that could be construed as a violation of this policy;
 - b. A promise by the respondent not to retaliate against the complainant;
 - c. The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the discrimination or harassment, and any other relief necessary to remedy the situation; and/or
 - d. A procedure for monitoring compliance with the agreement.
4. If the complaint **can** be resolved informally, the Formal Resolution Procedure detailed herein will not be followed. A copy of the written mediation agreement will be maintained in the central registry along with the complaint. A copy of the mediation agreement will also be provided to the complainant and respondent.
5. If the complaint **cannot** be resolved informally, the complaint shall follow the Formal Resolution Procedure in this Policy. The Informal Resolution Procedure is **not** required prior to initiating the Formal Resolution Procedure.

B. Formal Resolution Procedure

1. Administrative Inquiry or Formal EEO Investigation

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- a. When a complaint is to be handled through formal procedures, an impartial administrative inquiry or formal EEO investigation will begin within ten (10) working days after the EEO Officer's receipt of a written or oral complaint, regardless of whether the complaint was first received by a supervisor or the EEO Officer.
 - i. In the case of complaints which are initially but unsuccessfully addressed through the informal process, an impartial administrative inquiry or formal EEO investigation will begin within ten (10) working days of mediation failure.
 - ii. Whether a complaint is handled through formal or informal procedures, in the case of an oral complaint received directly by the EEO Officer or which, for any reason, has not been reduced to writing on the Discrimination, Harassment, and Retaliation Complaint Form, the EEO Officer shall fill out the Form and then obtain the complaining employee's signature on it, verifying that it accurately reflects the employee's report.
 - iii. If an employee refuses or decides not to sign the form, the supervisor or EEO Officer shall so note that on the form and process it as though it had been signed.
 - iv. If the alleged conduct could be a violation of policy, but an individual chooses not to file an individual complaint, the supervisor or EEO Officer will so note on the form and the matter will be reviewed in the name of the appropriate cognizant supervisor.
 - v. The Department attempts to complete administrative inquiries or formal EEO investigations within fifteen (15) working days. Except in the most unusual circumstances, investigations must be completed within thirty (30) working days unless a longer period of time is authorized by the Secretary after his review of a written request by the EEO Officer justifying the need for more time.
 - vi. The pendency of a criminal investigation and/or prosecution shall provide sufficient justification to delay the administrative inquiry or formal EEO investigation in order to not compromise the criminal investigation and/or prosecution.
 - vii. Where a formal EEO investigation is conducted under this policy, the complainant and the respondent shall be apprised of the progress of the investigation and the estimated completion date of the investigation not less than every fifteen (15) days.
- b. Upon notification of a complaint, the EEO Officer may request that an administrative inquiry be conducted to determine the need for formal EEO investigation. When requested, the inquiry will be conducted by an appropriate level supervisor to be determined in consultation with the EEO Officer.
- c. If an administrative inquiry is conducted, the results of the inquiry along with all supporting documentation will be forwarded to the EEO Officer for further review. If the EEO Officer determines that further investigation is not warranted, the EEO Officer will determine the appropriate disposition of the matter to include dismissal, appropriate corrective action, or the recommendation of discipline.
- d. If, based upon the administrative inquiry, the EEO Officer determines that corrective action is appropriate; the EEO Officer shall make a determination as to the appropriate corrective action and issue such action to the respondent.

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- e. If, based upon the administrative inquiry, the EEO Officer determines that disciplinary action is warranted; the EEO Officer will prepare and submit a report with a disciplinary action recommendation to the Chief and/or Secretary for consultation and final determination.
 - f. If, based upon the administrative inquiry, the EEO Officer determines that a formal EEO investigation is warranted, the EEO Officer or designee will conduct a formal EEO investigation or, if necessary to expedite the resolution of a complaint or resolve any potential conflict of interest, will appoint a competent independent outside investigator to conduct the investigation. When the complaint of discrimination, harassment, or retaliation is against the EEO Officer, the investigation shall be conducted by a competent independent investigator appointed by the Secretary in accordance with these procedures.
 - g. Where a formal EEO investigation is conducted under this policy, all interviews with the complainant, respondent, and witnesses **shall** be recorded and preserved.
 - h. Where a formal EEO investigation is conducted under this policy, the EEO Officer, or designee shall contact the respondent, give him, or her, a copy of the complaint, solicit the respondent's account of the alleged incidents, and inform the respondent that a recommendation and report will be prepared.
 - i. Where a formal EEO investigation is conducted under this policy, the EEO Officer, or designee, shall interview the complainant, the respondent, and any other witnesses identified by the complainant, or the respondent, or otherwise brought to the EEO Officer's attention, or whom the EEO Officer believes may have relevant information. Witnesses should not be limited only to those who directly observed the complained about events, and may include others with knowledge of the working environment, the complainant, or the respondent.
 - j. All individuals interviewed as part of an administrative inquiry or formal EEO investigation shall be informed that the DPS does not tolerate retaliation against any individual who opposes what s/he reasonably believes to be civil rights based discrimination, harassment, or retaliation or who cooperates in good faith in the investigation of a complaint.
 - k. During an administrative inquiry or formal EEO investigation, all aspects of the complaint and investigation shall be held in the strictest confidence by all parties and the EEO Officer, or designee, except to the extent reasonably necessary to resolve the complaint or implement any corrective action or discipline. Witnesses, the complainant, and the respondent shall not discuss their statements with each other or other employees.
 - l. As part of an administrative inquiry or formal EEO investigation, the EEO Officer, or designee, shall review the central registry, described below, to determine whether prior complaints of discrimination, harassment, or retaliation have been made by the complainant, or against the respondent, and the outcome of any prior complaints.
 - m. As part of an administrative inquiry or formal EEO investigation, the EEO Officer, or designee, shall determine if any supervisor was aware of the conduct and did not report or respond to it as required by this policy.
2. Report and Recommendation
- a. Following completion of an administrative inquiry or a formal EEO investigation, the EEO Officer shall make an assessment of the following:

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- i. All of the facts and circumstances surrounding the complaint and the working environment;
 - ii. The credibility of the complainant, the respondent, and any witnesses; and
 - iii. The existence of prior complaints and their resolution.
 - b. Based on this assessment, the EEO Officer shall arrive at a determination about whether the alleged discrimination, harassment, or retaliation occurred.
 - c. No complaint shall be dismissed, or found to be unsubstantiated, solely because no witnesses other than the complainant and the respondent are available.
 - d. The EEO Officer, or designee, shall prepare a written report and recommendation promptly following the completion of a formal EEO investigation or following an administrative inquiry where disciplinary action is recommended. Except in the most unusual circumstances, the report must be completed within fifteen (15) working days after the completion of the inquiry or investigation. Extensions beyond fifteen (15) working days must be authorized by the Secretary, after his review of a written request by the EEO Officer justifying the need for more time.
3. The report and recommendation must include:
- a. A summary of the complaint;
 - b. A summary of the response by the individual charged with discrimination, harassment, or retaliation;
 - c. A summary of the statements and evidence obtained during the investigation;
 - d. A finding of whether a policy violation has occurred and an explanation supporting that finding along with a finding of whether any supervisor was or should have been aware of the violation and failed to report or respond to it;
 - e. If a violation occurred, the finding must include a statement about the severity of the violation;
 - f. An assessment of any credibility concerns regarding the complainant, respondent, or any witness and an explanation for the basis of the concern;
 - g. A summary of known prior mediation agreements, corrective actions regarding similar conduct, or substantiated complaints against the respondent;
 - h. A recommendation of discipline against the respondent, if appropriate, along with an explanation for the particular recommendation;
 - i. A recommendation of corrective action or discipline against a supervisor who knew or should have been aware of the discrimination, harassment, or retaliation and did not report or respond to it, if appropriate, along with an explanation for the particular corrective or disciplinary action recommendation;
 - j. A recommendation as to the restoration of any employment terms, conditions, or opportunities the complainant might have lost as a result of the discrimination, harassment, or retaliation; and
 - k. An appendix containing relevant information and evidence obtained during the investigation.

C. Final Resolution of Complaint

1. Where disciplinary action is recommended following an administrative inquiry or following a formal EEO investigation, a copy of the report and recommendation shall be sent to the Secretary and/or the Chief.
2. The Chief, in the case of law enforcement personnel, and the Secretary, in the case of civilian personnel, shall make the final determination as to the discipline, if any to be imposed after consultation with the EEO Officer.
3. If the Chief is being investigated, the determination as to the discipline to be imposed shall be made by the Secretary.
4. Corrective or disciplinary action is mandatory when the EEO Officer determines that the respondent has engaged in discrimination, harassment, or retaliation. The corrective and/or disciplinary action imposed may range from corrective counseling up to and including termination.
5. After consideration of a report recommending disciplinary action or a report issued following a formal EEO Investigation, the Secretary and/or the Chief shall make a determination as to whether to take one or more of the following courses of action:
 - a. Sustain the complaint, order the conduct to stop, impose appropriate discipline on the respondent, recommend the restoration of any employment benefit the complainant lost because of the conduct, and provide any other relief necessary, within their purview, to remedy the situation;
 - b. Order further investigation and require a supplementary report and recommendation; or
 - c. Dismiss the complaint if it is found to be without merit.
6. If the EEO Officer finds that discrimination, harassment, or retaliation occurred and the Secretary and/or the Chief determine that disciplinary action should be taken which is less or more severe than that recommended by the EEO Officer, the Secretary and/or the Chief shall prepare a written memorandum, to be appended to the EEO Officer's report and recommendation, explaining the basis for the downward or upward deviation.
7. Once the Secretary and/or the Chief have approved the recommendation and report:
 - a. Respondent shall be provided with a copy of the report and recommendation only in cases where the complaint is sustained and discipline is imposed,
 - b. An employee complainant shall be provided a separate report that includes:
 - i. A summary of the complaint;
 - ii. A summary of the response by the individual charged with discrimination, harassment, or retaliation;
 - iii. A finding of whether a violation of this policy occurred and an explanation supporting the finding; and
 - iv. A statement regarding whether disciplinary action has been recommended. This statement shall not detail the discipline recommended.
 - c. The EEO Officer may meet with the employee complainant to explain the decision.

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- d. Client complainants shall be informed in writing that the investigation was completed and that the Department has taken appropriate action.
8. The respondent's division director and/or supervisor shall meet with the respondent to explain the decision and implement any discipline in accordance with the Department's Discipline Policy and/or any other rules, regulations, or laws.
9. The respondent is provided with a copy of the report solely to assist him or her in exercising his or her rights under the Department's Discipline Policy. The contents of the report are to be kept confidential except for this purpose and not to be disseminated for any other purpose.
10. Either party can respond in writing to the report and decision as a formal rebuttal to be included in the official file. If disciplinary action is taken, the respondent may exercise his or her rights under the Department's Discipline policy and/or any other rules, regulations, or laws.
11. The supervisor of an individual found to have violated the Anti-Discrimination, Harassment, and Retaliation Policy is responsible for monitoring the individual's compliance with any recommendation made as a result of the finding. The supervisor must make his or her best efforts to ensure that the discrimination, harassment, or retaliation does not recur and that the complainant is not subjected to retaliation by the individual found to have violated this policy, or by other co-workers.
12. The Secretary and/or the Chief shall ensure that any disciplinary action imposed by the Secretary and/or the Chief is implemented subject to the right of the respondent to appeal the disciplinary action in accordance with the Departments' policy regarding discipline, and any other rules, regulations, or other laws.

D. Confidentiality

All inquiries, complaints, and investigations under this policy will be confidential. Information is revealed strictly on a need-to-know basis.

E. Central Registry

A copy of all complaints, tape recorded interviews, investigation reports, final decisions, or mediation agreements, and all other evidence, shall be kept in a central registry for a minimum of ten (10) years, and accessible by the EEO Officer, in a secured, confidential file.

F. Annual Analysis of Grievances

The EEO officer shall coordinate with the Standards Bureau commander to provide information related to discrimination grievances filed at the end of every year. This shall be done in order for the Standards Bureau commander to conduct the annual analysis of grievances as described in *ADM: 03 Grievances*. The Standards Bureau commander shall include "generic" information in their final report that does not reveal any confidential information about the discrimination grievances, but shows an analysis has been conducted. The Standards Bureau commander and EEO officer shall ensure no confidential information is revealed regarding grievances filed.

G. Rights of the Complainant

The procedures under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination, harassment, or retaliation under state or federal laws.

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7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: s/ Gorden E. Eden Jr.
DPS Cabinet Secretary

DATE: December 23, 2013